

MOTION FILED
OCT 15 1990

47
No. 90-443

IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

KERN RIVER GAS TRANSMISSION COMPANY,
Petitioner,

v.

THE COASTAL CORPORATION,
COLORADO INTERSTATE CORPORATION,
COLORADO INTERSTATE GAS COMPANY,
COASTAL WESTERN PIPELINE COMPANY,
COLORADO INTERSTATE GAS WESTERN
PIPELINE COMPANY, and
WYOMING-CALIFORNIA PIPELINE COMPANY,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
AND BRIEF AMICUS CURIAE ON BEHALF OF THE
AMERICAN AUTOMOBILE ASSOCIATION, INC.
IN SUPPORT OF PETITIONER

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COASTAL WESTERN PIPELINE COMPANY,
COLORADO INTERSTATE GAS WESTERN PIPELINE COMPANY,
and WYOMING-CALIFORNIA PIPELINE COMPANY
Respondents.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Automobile Club of America ("AAA"), a Connecticut corporation with a direct interest in the outcome of the captioned case, respectfully moves this Court for leave to file the attached brief *amicus curiae* in this case. Petitioner has consented to AAA's filing of this brief. The consent of respondent, The Coastal Corporation, et al., was requested but refused.

STATEMENT OF INTEREST

The American Automobile Association, Inc. (hereinafter "Amicus") is a corporation of Connecticut having its headquarters in Heathrow, Florida. It comprises over fifty clubs and divisions located throughout the United States and provides auto and travel-related services to its 31 million members while working to promote safe and enjoyable travel for all motorists and the travelling public.

To assist its members with their travel plans, Amicus produces and distributes 315 million AAA sheet maps, strip maps and the AAA Road Atlas. Amicus employs a large staff in its cartography department and invests substantial resources in producing and updating its maps. The copyright protection which has been afforded these maps over the past sixty years is highly valued by Amicus.

REASONS FOR GRANTING THE MOTION

As grounds for this Motion, Amicus would show the Court that AAA produces and distributes 315 million maps to its membership (which currently exceeds 31 million members). Amicus is concerned that the decision of the Fifth Circuit will jeopardize the copyright protection in its maps.

As further grounds for this Motion, Amicus would show the Court that the document it wishes to file is very brief and therefore will not represent an undue burden on the limited resources of this Court.

CONCLUSION

WHEREFORE, Amicus moves the Court for leave to appear in support of the Petition for Certiorari herein and to file the brief attached hereto.

Respectfully submitted,
AUTOMOBILE CLUB OF AMERICA

By: Lawrence E. Laubscher

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE AMERICAN AUTOMOBILE ASSOCIATION, INC. AS AMICUS CURIAE	1
ARGUMENT	2
THIS CASE RAISES AN ISSUE OF EXCEPTIONAL IMPORTANCE TO THE COMMERCIAL MAPMAKING INDUSTRY.	2
CONCLUSION	4
CERTIFICATE OF SERVICE	5



TABLE OF AUTHORITIES

CASES	Page
<i>Crocker v. General Drafting Co.</i> , 50 F.Supp. 634 (S.D.N.Y. 1943)	2
<i>General Drafting Co. v. Andrews</i> , 37 F.2d 54 (2d Cir. 1930)	2



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BRIEF AMICUS CURIAE ON BEHALF OF THE
AMERICAN AUTOMOBILE ASSOCIATION, INC.
IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE

The American Automobile Association, Inc. (hereinafter "Amicus") is a corporation of Connecticut having its headquarters in Heathrow, Florida. It comprises over fifty clubs and divisions located throughout the United States and provides auto and travel-related services to its 31 million members while working to promote safe and enjoyable travel for all motorists and the travelling public.

To assist its members with their travel plans, Amicus produces and distributes 315 million AAA sheet maps, strip maps and the AAA Road Atlas. Amicus employs a large staff in its cartography department and invests substantial resources in producing and updating its maps. The copyright protection which has been afforded these maps over the past sixty years is highly valued by Amicus.

ARGUMENT

I. THIS CASE RAISES AN ISSUE OF EXCEPTIONAL IMPORTANCE TO THE COMMERCIAL MAPMAKING INDUSTRY.

The opinion of the Fifth Circuit Court of Appeals in this case negates the basic copyright protection historically recognized for maps. Petitioner's maps in the present case are fundamentally no different from automobile road maps, such as those published by Amicus, which have historically been held copyrightable. *See, e.g., General Drafting Co. v. Andrews*, 37 F.2d 54 (2d Cir. 1930) (automobile road maps held subject to copyright protection).

For example, in *Crocker v. General Drafting Co.*, 50 F.Supp. 634 (S.D.N.Y. 1943), the court held that an automobile road map prepared for use in advertising a popular resort was, together with its annual revisions and changes, copyrightable, the issue being whether the selection and arrangement of the material on the map itself, together with the manner of presentation or portrayal of the component parts in the map as a whole, was copyrightable. The plaintiff in *Crocker* obtained data on the maps by visits to state capitals, sent detailed maps and cuttings to county superintendents and

engineers, and to local highway departments, for corrections, changes and omissions, and made personal investigations through travelling investigators and field representatives. The plaintiff's data was carefully checked and analyzed before it was used in the maps. The efforts of Petitioner's cartographers in the present case were no less worthy of protection than those of the cartographer in *Crocker* and should be similarly held subject to protection.

Copyright protection for all maps is negated by the Court of Appeals' erroneous application of the "merger" doctrine in this case. Accordingly, Amicus agrees with and hereby adopts the points and authorities put forward by Petitioner Kern River Gas Transmission Co. ("Kern River").

Amicus fully expects that, unless the Fifth Circuit's opinion is reversed, efforts to protect cartographic works as fact works will now be met consistently with the defense that depictions of geographic features on maps, as depictions of fact, are "merged" with the idea of those features and are unprotectable. Protection for maps would therefore be reduced to protecting mere embellishments, such as colors, distinctive symbols and arrangements of material. Depictions of roads, towns, rivers and the like would not be covered, so that original maps of geographic features developed by one party could be freely copied by competitors. Such would amount to a substantial reduction of the protection afforded to maps under existing law.

CONCLUSION

WHEREFORE, Amicus urges the Court to grant Kern River's Petition for Certiorari herein and to reverse the decision of the Court of Appeals below.

Respectfully submitted,
AUTOMOBILE CLUB OF AMERICA

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October 15, 1990

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 16, 1990, copies of the foregoing AMICUS BRIEF OF THE AMERICAN AUTOMOBILE ASSOCIATION, INC. IN SUPPORT OF PETITION FOR CERTIORARI were sent by first class mail, postage prepaid, to the following counsel of record:

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